

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

Evangelina Henry; Katherine Herring; Deborah Hicks; Richard Highfill; Marcella Hill; Susan Hinderer-Hall; Mary Holliday; Lewanna Holmes; Evie Honea; Bobby Hooker; Jane Hoover; Georgia Hopson; Melba Horn; Sylvia Hoth; Susan Howell; Sherilyn Hudson; LeAnn Hughes; Linda Humphrey; Ona Ann Hurd; Tina Hurley,

Plaintiffs

v.

C.A. No. 04cv11252-GAO

Indevus Pharmaceuticals, Inc., F/K/A Interneuron Pharmaceuticals, Inc.; Wyeth, Inc., F/K/A American Home Products Corporation; Wyeth Pharmaceuticals, Inc F/K/A Wyeth-Ayerst Pharmaceuticals, Inc., A Division Of American Home Products Corporation; and Boehringer Ingelheim Pharmaceuticals, Inc.,

Defendants

PLAINTIFFS' MOTION TO REMAND

Pursuant to 28 U.S.C. § 1447(c), plaintiffs hereby seek to remand this action to the Superior Court of the Commonwealth of Massachusetts, Middlesex County, where this action was originally filed. In support of this motion, plaintiffs state that the ground asserted for removal by defendants Wyeth, Inc. f/k/a American Home Products Corporation; and Wyeth Pharmaceuticals, Inc. f/k/a Wyeth-Ayerst Pharmaceuticals, Inc., a Division of American Home Products Corporation (collectively referred to as "Wyeth"), is improper.

More specifically, defendant, Indevus Pharmaceuticals, Inc., f/k/a Interneuron Pharmaceuticals, Inc. ("Indevus"), is a resident of Massachusetts and has not been

fraudulently joined. Wyeth cannot meet the high burden for fraudulent joinder as the allegations in the complaint and supporting affidavits show that plaintiffs have far more than a colorable claims against Indevus.

In support of this motion, plaintiffs rely upon their consolidated memorandum filed in *Amadeo, et al v. Indevus, et al*, No. 04cv11039, and supporting documents. Individual affidavits will be supplied if deemed necessary.

In the event that this motion is granted, plaintiffs request that this Court issue an order requiring that the removing defendants pay plaintiffs' just costs and any actual expenses, including attorneys fees, incurred as a result of the removal.

The Plaintiffs
By their attorneys,

/s/ Michael S. Appel
Edward J. Barshak (BBO # 032040)
Michael S. Appel (BBO # 543898)
Samuel M. Furgang (BBO # 559062)
Sugarman, Rogers, Barshak & Cohen, P.C.
101 Merrimac Street, 9th Floor
Boston, MA 02114
(617) 227-3030

Samuel W. Lanham, Jr. (*Motion to admit Pro Hac Vice filed*)
Cuddy & Lanham, P.A.
470 Evergreen Woods
Bangor, ME 04401
(207) 942-2898

Neil D. Overholtz (*Motion to admit Pro Hac Vice filed*)
Aylstock, Witkin & Sasser, P.L.C.
55 Baybridge Drive
P.O. Box 1147
Gulf Breeze, FL 32562-1147
(850) 916-7450

Dated: July 8, 2004